

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CITY OF NORTH LAS VEGAS, *et al.*,)
)
 Plaintiff,)
 vs.)
)
 LEE EDWARD SZYMBORSKI,)
)
 Defendant.)

Case No.: 2:19-cv-00955-GMN-DJA

ORDER

Pending before the Court is Lee Edward Szymborski's Objection, (ECF No. 8), to the Honorable Magistrate Judge Daniel J. Albregts's Report and Recommendation ("R&R"), (ECF No. 7). The R&R recommends dismissal of this case because Szymborski has failed to file a complaint despite being warned on July 10, 2019, that failure to do so within thirty days would result in dismissal of the action without prejudice. (R&R 1:12–18); (Order, ECF No. 5) (ordering that Szymborski "file the complaint associated with this action within 30 days from the date of this order," and warning of dismissal).

The Court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct "any review at all . . . of any issue that is not the subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985); *see also United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) ("De novo review of the magistrate judges' findings and recommendations is required if, but only if, one or both parties file objections to the findings and recommendations."); Fed. R. Civ. P. 72, Advisory Committee Notes (1983).

1 In his Objection, Szyborski states he did not receive the Court's July 10, 2019 Order
2 warning of dismissal because his mailbox had been physically damaged on several occasions
3 around that time. (Obj. 2:5–16). Szyborski adds that, due to not receiving the July Order, he
4 did not know he failed to attach a complaint with past filings. Yet, even after realizing this
5 mistake and filing the Objection, Szyborski again failed to file a complaint—though he
6 claims to have attached the complaint as Exhibit 1 to the Objection. (*See id.* 2:5) (referencing
7 the “ATTACHED COMPLAINT,” but the filing contains no attachments or exhibits). And in
8 the several months since Szyborski filed his Objection, he still has not corrected this
9 deficiency. Consequently, pursuant to this District's Local Rule IA 11-8, dismissal of this
10 action is an available penalty based on his continued noncompliance with the Court's Orders.
11 D. Nev. Local R. IA 11-8. However, because dismissal is a harsh penalty, the Court will weigh
12 five factors to determine the appropriateness of such action: “(1) the public's interest in
13 expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of
14 prejudice to [the party seeking sanctions]; (4) the public policy favoring disposition of cases on
15 their merits; and (5) the availability of less drastic sanctions.” *Hester v. Vision Airlines, Inc.*,
16 687 F.3d 1162, 1169 (9th Cir. 2012) (quotation omitted).


17 Of the five factors, the first and second strongly favor dismissal here. “Orderly and
18 expeditious resolution of disputes is of great importance to the rule of law,” and Szyborski's
19 actions are blatantly inconsistent with that expectation. *See In re Phenylpropanolamine (PPA)*
20 *Prod. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006). His failure to comply with the Court's
21 Orders and failure to ensure that his filings comply with clear instructions have unnecessarily
22 prevented any substantive progress in this case for over a year. (*See* Receipt of Initiating
23 Documents, ECF No. 1) (filed on June 3, 2019). This failure has caused the Court to expend
24 time and resources that could have gone to other matters deserving of attention.
25

1 However, after considering the third, fourth, and fifth factors, the Court finds that
2 Szyborski should have one final attempt to file a complaint in this action before dismissal
3 occurs. None of the other parties in this case have appeared yet; and thus, the Court does not
4 find that the current delay creates a risk of prejudice to other parties worthy of dismissal at this
5 time. Disposing of this case on the merits further weighs against dismissal—but only
6 minimally. *Cf. In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d at 1228 (“[T]his
7 factor [of disposition on the merits] lends little support to a party whose responsibility it is to
8 move a case toward disposition on the merits but whose conduct impedes progress in that
9 direction.”) (quotations omitted). Lastly, based on Szyborski’s representation that he “has
10 never received any notice prior to the [R&R]” about the possibility of dismissal for failing to
11 file a complaint, one final warning is appropriate.

12 Szyborski will have ten days to file a complaint in this case. This timeframe is more
13 than sufficient to file the already-drafted complaint that Szyborski claims to have attached to
14 prior filings. Accordingly,

15 **IT IS HEREBY ORDERED** that the Court **ADOPTS in part** the Honorable
16 Magistrate Judge Daniel J. Albregts’s Report and Recommendation, (ECF No. 7). Szyborski
17 has ten days from the date of this Order to file a complaint in this case. Failure to do so will
18 result in dismissal of the case without prejudice.

19 **DATED** this 29 day of June, 2020.

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22 _____
23 Gloria M. Navarro, District Judge
24 United States District Court
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